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EXAMINER
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MEINECKE DIAZ, SUSANNA M

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KEISUKE AOYAMA,  
KOJIRO TOYOSHIMA, and  
YOSHITAKA EZAKI

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Appeal 2009-006755  
Application 10/798,505  
Technology Center 3600

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Decided: June 16, 2010

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W.  
FETTING, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

## STATEMENT OF THE CASE<sup>1</sup>

On Jan. 19, 2010, Keisuke Aoyama, Kojiro Toyoshima, and Yoshitaka Ezaki (Appellants) filed a Request for Rehearing under 37 C.F.R. § 41.52 directed to the rejection of claim 11 on the grounds of anticipation in the Decision on Appeal (mailed Nov. 17, 2009).<sup>2</sup> As the same issue argued is present in independent claim 21, we take this request to implicitly be directed to that claim and to the claims 12-14 and 22-24 that depend from claims 11 and 21 as well.

## ARGUMENT

The Appellants argue that the Board misconstrued the reverse logistics means for generating transfer data in claims 11 and 21. The Appellants content that the entire process 800 shown in Figure 8 of the application described the structure that supports the recited means. Request 5.

## ISSUE

Did the Board misapprehend the Specification in construing the reverse logistics means for generating transfer data in claims 11 and 21?

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<sup>1</sup> Our decision will make reference to the Appellants' Request for Rehearing ("Request," filed Jan. 19, 2010) and the Board of Patent Appeals and Interferences' Decision ("Decision," mailed Nov. 17, 2009), and the Appellants' Specification ("Spec.," filed Mar. 11, 2004).

<sup>2</sup> The Request does not challenge the decision to affirm the Examiner's rejection of claims 26-36 and 38 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Decision 21. Nor does the Request challenge the decision to affirm the Examiner's rejection of claims 25, 27-30, and 32-36 under 35 U.S.C. § 103(a) as unpatentable over Yang and Singh and claim 38 over Yang alone, and of the process claims 26 and 31 under 35 U.S.C. § 102(a) as anticipated by Yang. Decision 21-22.

## BACKGROUND

In the Decision, we affirmed the Examiner's rejection of claims 11-14 and 21-24 as anticipated by Yang. Decision 21. The two independent claims 11 and 21 each recite a reverse logistics means for generating transfer data. We found that Yang anticipated this element based on our construction of the means as a system for supply chain management that might contain order controller, warehouse, or distribution systems for generating such shipping data from the description in the Specification. Decision 13-15. The Appellants contend our construction was in error, that the means is the flow diagram of process 800 shown in Figure 8 of the application and its equivalents, and that the means construed as such is not anticipated by Yang. Request 3.

## DISCUSSION

As the issue raised by the Appellants is the construction of the reverse logistics means for generating transfer data, we cite the Decision at 13-14 for the details of that construction.

The Appellants initially argue that the Board did not respond to the Appellants' arguments regarding the Examiner's failure to perform the analysis required for construing a means plus function claim limitation. Request 2. The Examiner provided the required analysis at Answer 13-15, in which the Examiner construed the reverse logistics means for generating transfer data as "any combination of hardware and/or software programmed to perform this [generating transfer data] functionality." *Id.* at 14-15.

We agreed with the Examiner's analysis and construction and further found that the Specification also describes this structure as a system for

supply chain management that might contain order controller, warehouse, or distribution systems for generating shipping data. Decision 14.

The Appellants next argue that the Examiner's and the Board's construction is erroneous because Process 800 in Figure 8 is the means for generating transfer data. Request 2-3. We disagree with the Appellants that what is depicted as process 800 in Figure 8 describes the structure to perform the function of generating transfer data<sup>3</sup>, and described in Specification ¶'s 0088-93. Process 800 is not described as an algorithm for generating transfer data, nor does it show how to generate transfer data.

The Specification describes Figure 8 as "a flowchart of a method 800 for reverse logistics" (Specification ¶ 0088). The Specification does not describe or define what reverse logistics is other than to mention it is used "to optimize the cost of goods, shipping costs, to accommodate promotions, product rollout, product deletions, product replacements, or to perform other suitable functions" (*id.*). This does not describe how method 800 or reverse logistics applies to generating transfer data.

While Figure 8 provides a diagram of high level process flow, it does not describe any structure that would alter a general purpose computer into a special purpose computer. It fails to describe, even at a high level, how a computer could be programmed to produce the structure that provides the results described in the boxes, since the essential structural implementation

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<sup>3</sup> The phrases "generating transfer data" and "transfer data" are not defined and do not occur in the Specification. These phrases were introduced for the first time into the claims in amendments filed January 4, 2006. The Appellants point to no portion of the Specification or Drawings that use these phrases.

detail is omitted. Instead, the diagram pictorially presents several results to be obtained, without describing how to achieve those results, and certainly not how to generate transfer data.

The Appellants next argue that generating transfer data is what the various blocks in Figure 8 do at Request 4. The Appellants cite no portion of the Specification or drawings to support this argument. Thus, the Appellants start from the premise that Figure 8 portrays an algorithmic structure (of something undefined called reverse logistics), and conclude that this structure corresponds to the recited means for generating transfer data, for which no support is found in the disclosure. We have accordingly considered the Appellants' arguments, and conclude that Process 800 in Figure 8 does not describe and cannot be the means for generating transfer data.

Accordingly, we maintain that the only structure described in the disclosure for performing the function recited in claim 11 is a system for supply chain management that includes order controller, warehouse and distributions systems or their equivalents. Accordingly, we see no error in the prior Decision for affirming the rejection of claims 11-14 and 21-24 as anticipated by Yang.

## CONCLUSION

We have considered the Appellants' Request for Rehearing.

For the foregoing reasons, we find it unpersuasive as to error in the Decision to sustain the rejection of claims 11-14 and 21-24 under 35 U.S.C. § 102(a), as being anticipated by Yang, and the Request for Rehearing of the rejection of claims 11-14 and 21-24 under 35 U.S.C. § 102(a), as being

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anticipated by Yang is denied. No arguments regarding the remaining claims and rejections are made and therefore the decision as to those claims and rejections also stands.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv) (2007).

DENIED

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